



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 175519

PRELIMINARY RECITALS

Pursuant to a petition filed on July 12, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on August 24, 2016, by telephone. The record was held open an additional fourteen (14) days at petitioner's request in order to submit additional documentation from the petitioner's dentist in response to the Department's decision. No additional documentation was submitted by the petitioner.

The issue for determination is whether the Department correctly denied the prior authorization for orthodontics.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED] DDS (by written submission)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner's provider submitted a prior authorization (PA) request seeking orthodontic treatment.
3. The Department's dental consultant determined that the Salzmann score for petitioner is 20.
4. The Department denied the PA request by a letter dated June 13, 2016.

DISCUSSION

Petitioner appeals because DHCAA denied PA for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and orthodontic retention. This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

Orthodontic services are not covered under MA. Wis. Admin. Code §§ DHS 107.07(1) intro. & 107.07(4)(j) (February 2014). However, medical services provided to Early and Periodic Screening, Diagnosis and Treatment ["EPSDT"] patients must be covered for all recipients under age 21 years if the EPSDT health assessment and evaluation indicates that they are needed. 42 C.F.R. § 441.56(c)(2) (2015); Wis. Admin. Code §§ DHS 107.22(1) & 107.22(4) (February 2014); See also, 42 USC § 1396d(a) & Wis. Admin. Code § DHS 101.03(54) (December 2008). Prior Authorization ["PA"] under section DHS 107.02(3) of the Wisconsin Administrative Code is required for coverage of such services. Wis. Admin. Code § DHS 107.22(4) (February 2014). Thus, the determination of whether or not the EPSDT health assessment and evaluation "indicates" that a requested service is "needed" is made by the PA process. In determining whether to approve or disapprove a request for PA the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations must be considered. Wis. Admin. Code § DHS 107.02(3)(e)9. (February 2014). Written state policy interpretations provide that orthodontic treatment can be approved in any of the following circumstances:

- (1) a severe and handicapping malocclusion determined by a minimum Salzmann Index of 30;
- (2) in extenuating circumstances, the dental consultant may, after comprehensive review of the case, determine that a severe handicapping malocclusion does exist, and approve the orthodontic treatment even though the Salzmann score is less than 30;
- (3) certain cases of minor treatment (1-4 teeth) can be approved for limited or interceptive orthodontic treatment using either fixed or removable appliances; or,
- (4) if the request for orthodontic services is the result of a personality or psychological problem or condition and a patient does not meet the criteria listed above, then a referral from a mental health professional is required.

ForwardHealth: BadgerCare Plus and Medicaid Handbook Area Dental Topic #2909 ("Severe Malocclusion"); *Wisconsin Medicaid Provider Handbook* ["WMPH"], Part B (Dental Handbook), Appendix 17, page B118 (issued 11/98); See also, *Prior Authorization Guidelines Manual* pages 125.004.03-04 & 125.005.03-04 (10/04/95); See also, DHA Case No. MPA-13/111381 (Wis. Div. Hearings & Appeals Proposed Decision July 30, 2010; Final Decision September 30, 2010) (DHS).

The petitioner requested and was granted additional time to submit documentation from his dentist to rebut the Department's findings; however, no additional documentation was submitted within the fourteen (14) day hold open period. Information in the record of this matter is that petitioner has a Salzmann Index of 20. There was no testimony or evidence of extenuating circumstances nor evidence to refute the Department's findings. Moreover, petitioner's mother testified that the petitioner's teeth were fine for now and that the concern was for crowding of teeth in the future. Based upon the evidence presented, petitioner does not satisfy any of the above criteria for approval of orthodontic treatment. Accordingly, the Department's denial of the PA request was proper.

CONCLUSIONS OF LAW

The Department correctly denied the PA request for orthodontic treatment.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of September, 2016

\s _____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 13, 2016.

Division of Health Care Access and Accountability